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## NOTICE OF ALLOWANCE AND FEE(S) DUE

43439 7590 12/21/2010

BERENBAUM WEINSHIENK PC  
370 17TH STREET  
SUITE 4800  
DENVER, CO 80202

EXAMINER

KIM, YOUNG J

ART UNIT

PAPER NUMBER

1637

DATE MAILED: 12/21/2010

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/590,768

11/16/2007

Gert Bolander Jensen

16381.851US01

2510

TITLE OF INVENTION: METHOD, CHIP, DEVICE AND SYSTEM FOR COLLECTION OF BIOLOGICAL PARTICLES

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$300	\$0	\$1810	03/21/2011

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.**

**THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.**

### HOW TO REPLY TO THIS NOTICE:

#### I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.**

# **PART B - FEE(S) TRANSMITTAL**

**Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
or Fax (571)-273-2885**

**INSTRUCTIONS:** This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

43439 7590 12/21/2010

**BERENBAUM WEINSHIENK PC**  
370 17TH STREET  
SUITE 4800  
DENVER, CO 80202

## **Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/590,768 11/16/2007 Gert Bolander Jensen 16381.851US01 2510

TITLE OF INVENTION: METHOD, CHIP, DEVICE AND SYSTEM FOR COLLECTION OF BIOLOGICAL PARTICLES

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
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nonprovisional NO \$1510 \$300 \$0 \$1810 03/21/2011

EXAMINER	ART UNIT	CLASS-SUBCLASS
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KIM, YOUNG J 1637 435-006000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 \_\_\_\_\_
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 \_\_\_\_\_
- 3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s); (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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10/590,768	11/16/2007	Gert Bolander Jensen	16381.851US01	2510
43439	7590	12/21/2010	EXAMINER	
BERENBAUM WEINSHIENK PC 370 17TH STREET SUITE 4800 DENVER, CO 80202			KIM, YOUNG J	
			ART UNIT	PAPER NUMBER
			1637	
DATE MAILED: 12/21/2010				

## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 11 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 11 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

**Notice of Allowability**

Application No.

10/590,768

Examiner

Young J. Kim

Applicant(s)

JENSEN ET AL.

Art Unit

1637

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Request for Continued Examination received on February 12, 2010.
2. ☒ The allowed claim(s) is/are 1-9 and 17-19.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                      |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date <u>See Continuation Sheet</u> | 7. <input type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                                 | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|  | 9. <input type="checkbox"/> Other _____.   |

/Young J Kim/  
Primary Examiner, Art Unit 1637

Continuation of Attachment(s) 3. Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date: 2/12/10 9/8/10 10/19/10.

### **DETAILED ACTION**

The present Office Action is responsive to the Amendment received on February 12, 2010.

#### ***Preliminary Remark***

Claims 1-9 and 17-19 are pending and are under prosecution herein.

#### ***Claim Rejections - 35 USC § 102***

The rejection of claims 10 and 11 under 35 U.S.C. 102(b) as being anticipated by Mainelis et al. (Aerosol Science and Technology, 1997, vol. 30, pages 127-144; IDS ref # 45), made in the Office Action mailed on August 12, 2009 is withdrawn in view of the Amendment received on February 12, 2010, canceling the rejected claims.

The rejection of claims 10-14 under 35 U.S.C. 102(b) as being anticipated by Mainelis et al. (Aerosol Science and Technology, 2002, vol. 36, pages 1073-1085; IDS ref# 47), made in the Office Action mailed on August 12, 2009 is withdrawn in view of the Amendment received on February 12, 2010, canceling the rejected claims.

#### ***Claim Rejections - 35 USC § 103***

The rejection of claims 10-16 under 35 U.S.C. 103(a) as being unpatentable over Birmingham et al. (U.S. Patent No. 5,989,824, issued November 23, 1999) in view of Mainelis et al. (Aerosol Science and Technology February 2002, vol. 36, pages 1073-1085; IDS<sup>1</sup> ref# 47), as applied to claims 1, 2, and 17 above, and further in view of Johns et al. (Letters in Applied Microbiology, 1994, vol. 18, pages 236-238; IDS<sup>4</sup> ref# 38), made in the Office Action mailed on August 12, 2009 is withdrawn in view of the Amendment received on February 12, 2010, canceling the rejected claims.

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The rejection of claims 1-8 under 35 U.S.C. 103(a) as being unpatentable over Birmingham et al. (U.S. Patent No. 5,989,824, issued November 23, 1999) in view of Mainelis et al. (Aerosol Science and Technology February 2002, vol. 36, pages 1073-1085; IDS<sup>2</sup> ref# 47), made in the Office Action mailed on August 12, 2009 is withdrawn in view of the arguments presented in the Amendment received on February 12, 2010.

The rejection of claim 9 under 35 U.S.C. 103(a) as being unpatentable over Birmingham et al. (U.S. Patent No. 5,989,824, issued November 23, 1999) in view of Mainelis et al. (Aerosol Science and Technology February 2002, vol. 36, pages 1073-1085; IDS<sup>3</sup> ref# 47), as applied to claims 1, 2, and 17 above, and further in view of Johns et al. (Letters in Applied Microbiology, 1994, vol. 18, pages 236-238; IDS<sup>4</sup> ref# 38), made in the Office Action mailed on August 12, 2009 is withdrawn in view of the arguments presented in the Amendment received on February 12, 2010.

### ***Double Patenting***

The provisional rejection of claims 1-9 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 10/590,630, made in the Office Action mailed on August 12, 2009 is withdrawn in view of the Terminal Disclaimer received on February 12, 2010.

The provisional rejection of claims 1-13 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of copending Application No. 10/590,632, made in the Office Action mailed on August 12, 2009 is withdrawn in view of the Terminal Disclaimer received on February 12, 2010.

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<sup>1</sup> IDS received on January 26, 2007

<sup>2</sup> IDS received on January 26, 2007

<sup>3</sup> IDS received on January 26, 2007

***Examiner's Reasons for Allowance***

Lee et al. (Sensors and Actuators, 1999, vol. 73, pages 74-79; IDS) disclose a device which comprises at least two electrodes which are separated by less than 20 mm, wherein the device comprises a chamber (housing said sensors), wherein the chamber is connected to an inlet and an outlet channel (page 75, Figure 3). Lee et al. disclose the sensor can be used to lyse cells from various sources. Lee et al., however, employs cells which are introduced via an aqueous medium (“the cell and the medium are pumped into the channel...”, page 75). Therefore, Lee et al. do not disclose or suggest that gaseous sample be used in their method. The cells in the medium are directed toward the electrodes via liquid flow (although electrostatic attraction is employed as well), which is mechanically different from the instantly claimed method which explicitly requires that the gaseous sample is treated with a first potential created between a first and a second electrode, and the “collection” of a biological particle in the gaseous sample is effected solely via said potential.

Mainelis et al. (of record), while disclosing that bacterial spores can be collected via electrostatic potential, do not disclose or suggest for a device having a chamber which comprises a volume of 500  $\mu\text{L}$  or lesser. Mainelis et al. also do not disclose or suggest contacting the captured biological particles with a first liquid in the same chamber and subjecting the collected biological particle to further analysis.

Birmingham et al. (of record), while disclosing a method of collecting biological samples via electrostatic mechanism, do not disclose or suggest that the device comprise two electrodes. The mechanism by which the collected samples are analyzed is also not in the manner in which the instant method conducts, as Birmingham et al. do not introduce the liquid in the same chamber in where the biological particles are collected.



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Therefore, it is determined that Lee et al., while disclosing a method of lysing cells introduced into the device via an aqueous medium, would not have motivated a one of ordinary skill in the art to use the same device for the collection of biological particles from gaseous samples. While Mainelis et al. disclose a method of collection of biological particles from air (thus gaseous sample), Mainelis et al. or Lee et al. direct the artisan to introduce a liquid to chamber where the biological particles are collected for analysis. While Birmingham et al. disclose a method and device for collection of biological particles from air and their analysis, the mechanism by which Birmingham et al. employs is incompatible with the teachings of Lee et al. or Mainelis et al, thereby failing to motivate the artisan to combine and to have a reasonable expectation of success at combining the teachings.

### *Inquiries*

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Young J. Kim whose telephone number is (571) 272-0785. The Examiner is on flex-time schedule and can best be reached from 6:00 a.m. to 2:30 p.m (M-F). The Examiner can also be reached via e-mail to [Young.Kim@uspto.gov](mailto:Young.Kim@uspto.gov). However, the office cannot guarantee security through the e-mail system nor should official papers be transmitted through this route.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Gary Benzion, can be reached at (571) 272-0782.

Papers related to this application may be submitted to Art Unit 1637 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 CFR 1.6(d)). NOTE: If applicant does submit a paper by FAX, the original copy should be retained by applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED, so as to avoid the processing of duplicate papers in the Office. All official documents must be sent

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to the Official Tech Center Fax number: (571) 273-8300. For Unofficial documents, faxes can be sent directly to the Examiner at (571) 273-0785. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Young J. Kim/  
Primary Examiner  
Art Unit 1637  
12/16/2010

/YJK/